

# The Citizen Forester

**April 2006 No. 102**

## **Preserving Special Trees: Using an Easement as a Tool for Private Tree Protection** - Hugh Kelleher, Chair, Newburyport Tree Committee

In 2005, the Newburyport Tree Committee was contacted by homeowner Claudette Moore who was selling her family's impressive property located on High Street. A massive copper beech stood in Claudette's backyard, and she wanted to ensure that no one ever cut down that tree. Not long before, she had seen a developer purchase a nearby home, and then remove another specimen beech in order to build a second home on the property.

How could a homeowner who loved a tree on her property make sure that it was permanently protected? Was there a way to ensure that, even after Claudette's property was sold, the historic copper beech would not fall to some future developer's chain saw?

Claudette herself had done preliminary research, and learned that in the State of Washington, easements had been used to protect individual trees. Working with the Tree Committee's volunteer lawyer Anne Dawley, a standard easement was drawn up. One important question was: Who would hold the easement? The Tree Committee was an official city body, and if the Tree Committee were to take possession of an easement, many political issues



might be raised. The mayor and city council might need to get involved and grant official approvals.

Instead, the Committee immediately created a non-profit group. Those of us on the Tree Committee had been planning, since in our inception in 2001, to create just such an entity in order to solicit funds and carry out activities that could be officially independent of, but work in partnership with, our city government. The need for a legal entity spurred us to get the paperwork done quickly. Within weeks, our non-profit Friends of Newburyport Trees (FONT, Inc.) was established with Tree Committee member Ed Taylor as our first President.

Attorney Anne Dawley then drew up an easement. Keep in mind that an easement to protect a tree (or small group of trees) is not to be confused with a “conservation easement.” Conservation easements are typically used to protect parcels of land. Here, the goal was simply to protect a single tree. This easement is essentially the same type that one property owner might grant a neighbor who wishes to use a pathway across the property. The easement means that the primary land owner still controls the property, but it grants certain rights to the easement holder. In this case, it is the responsibility of the property owner to maintain the tree, and periodic visits to inspect the tree may be arranged by FONT. However, the easement does not grant the public – or even representatives of FONT – the right to use the property. The sole purpose is to protect the tree.

When the tree declines, is damaged or becomes a hazard, the owners have the right to remove it. However, they must give 28 days notice to FONT, who would then inspect the tree. The easement specifically states that pruning and restoration alternatives are preferable to removal. It would be up to FONT, as the easement holder, to legally enforce those provisions if ever there were a dispute.

No surveying or sophisticated documentation was required. The tree was described in the easement, and a simple hand drawing of the area at the base of the tree was added. The easement must be renewed every thirty years.

In an interesting twist, the documentation was not quite ready when the property was sold. But the new owners had purchased the property in part because of their own appreciation of the beautiful copper beech. They enthusiastically signed the easement, and it now is part of the deed registered with Essex County.

We believe that this model can be replicated and used to protect special trees across our commonwealth. We have posted copy of the easement at [www.mass.gov/dcr/stewardship/forestry/urban/urbanFAQs.htm#ordinance](http://www.mass.gov/dcr/stewardship/forestry/urban/urbanFAQs.htm#ordinance). Feel free to copy it, and use it.

We should point out that, like all innovative legal approaches, an easement to protect a tree has not been tested in the courts. However, since it uses exactly the same type of format that has been in effect for generations, we believe that it would stand up to any legal test. We hope this approach will be used to protect a number of other trees in Newburyport and many other communities in the coming years.

## Picks and Shovels

**Sample ordinances and sub-division regulations** from some Massachusetts communities. [www.mass.gov/dcr/stewardship/forestry/urban/urbanFAQs.htm#ordinance](http://www.mass.gov/dcr/stewardship/forestry/urban/urbanFAQs.htm#ordinance)

**Seattle, Washington's PlantAmnesty Heritage Tree Program:** A non-profit organization that nominates, recognizes, and protects notable and heritage trees. See more at [www.plantamnesty.org/heritage\\_tree.htm](http://www.plantamnesty.org/heritage_tree.htm).

**Going Green:** You can download this multimedia presentation that illustrates how planting more trees in urban areas pays economic dividends for cities – a great package with which to approach your community leaders. See [www.going-green.org](http://www.going-green.org).

**New ForestryUSA Website:** A new internet gateway to trees, forests, and forest products in America. See [www.forestryusa.com](http://www.forestryusa.com).

**Benefit of Trees Shading Roads:** The USDA Forest Service recently completed a study evaluating the effects of tree shade over streets in California. In their study, shaded asphalt required only 2.5 slurry seals in 30 years compared to un-shaded asphalt that required 6 slurry seals. Trees slashed resealing costs nearly 60%. See [www.fs.fed.us/psw/programs/cufr/products/psw\\_2005\\_mcpherson001\\_joa\\_1105.pdf](http://www.fs.fed.us/psw/programs/cufr/products/psw_2005_mcpherson001_joa_1105.pdf).

**New Ecosystem Services Website:** The USDA Forest Service has just launched a website describing and exploring some of the ecosystem services (biodiversity, watershed services, carbon sequestration, etc.) provided by forests and some emerging markets for these services. See <http://www.fs.fed.us/ecosystems/services/>.

**Trees Cool Cities:** NASA researchers investigating the "Urban Heat Island Effect" in New York City found that "vegetation is a powerful cooling mechanism. It appears to be the most effective tool to reduce surface temperatures" and thus the urban heat island effect. This simple solution then results in energy savings, air quality improvements, and public health benefits. For the story, see: [http://www.nasa.gov/vision/earth/environment/nyc\\_heatisland.html](http://www.nasa.gov/vision/earth/environment/nyc_heatisland.html).

## Growing on Trees

**Massachusetts DCR Urban and Community Forestry Challenge Grants:** If your community wants to apply for an Urban and Community Forestry Challenge grant by the May 1 deadline, you must submit an Intent to Apply Form now! For the form and details on this grant program see <http://www.mass.gov/dcr/stewardship/forestry/urban/urbanGrants.htm>.

## On The Horizon

**Arbor Day!** Don't forget to organize an Arbor Day event in your community and involve your community and business leaders. Massachusetts recognizes the last Friday

in April as Arbor Day, but you can choose to celebrate this important event anytime during the growing season. Remember, an Arbor Day celebration and proclamation are requirements for Tree City USA!

**Boston Arbor Day:** The Boston Urban Forest Coalition, and a host of other partners, is organizing a series of Arbor Day events in Boston. The main event, on Friday, April 28, will be the planting of 100 trees at the Holland School in Dorchester and the surrounding neighborhood. Please consider joining us for this event. For more information, contact Eric Seaborn at 617-626-1468 or [eric.seaborn@state.ma.us](mailto:eric.seaborn@state.ma.us). Other Arbor Day planting locations also include:

- Mission Hill at the Mission Main Housing Development (April 29)
- Chelsea at "Our Garden"
- Roslindale at the Haley School
- Hyde Park at the Dell Rock Urban Wild
- Jamaica Plain at the Hennigan School

**Views of the Urban Forest, Lecture Series:** The Lexington Tree Committee is sponsoring a series of lectures on urban and community forest issues. All events are free, made possible through a grant from DCR and will be at the Lexington Carey Library at 7:30 p.m. Contact John Frey at [jwfre2@aol.com](mailto:jwfre2@aol.com). Series includes:

- April 12, 2006: Clarissa Rowe, Landscape Architect, head of the Arlington Land Trust and Jane Calvin, DCR Community Forester and Director of the Lowell Parks & Conservation Trust will speak on *Urban Forestry: The Broader Benefits*.
- May 10, 2006: William Cullina, Director of the Wildflower Nurseries will speak on *In Homage to Wood – Native Trees for the Urban Forest and Garden*.
- September 13, 2006: Jad Daley Campaign Director for the Northern Forest Alliance will speak on *Forests on the Edge – Linking Northeastern Wildlands and the Urban Forest* – September 13, 2006.
- October 18, 2006: David Pinsonneault Lexington's Superintendent of Public Grounds and Tree Warden will speak on *Implementing a Tree Management Program in Lexington*.

**Risk Tree Assessment, Train the Trainer Workshop, June 6-7, 2006, Fairlee, Vermont.** Contact John Parry at [jparry@fs.fed.us](mailto:jparry@fs.fed.us) for details.

## Species Spotlight



*Cotinus obovatus*,  
American smoketree

This small oval-shaped tree provides visual interest all year round. Its early spring flowering panicles have the appearance of wafting smoke, and remain through the summer. Bluish-green summer foliage gives way to

orange, red and purple fall color. And its grey-brown, flaky bark and growth habit add winter attractiveness.

Hardy to zone 4, this tree is native to the southeastern U.S. With an oval habit, it reaches 20-30 feet in height and has an equal spread.

**Advantages and Limitations:** The American smoketree prefers full sun. It is easily transplanted and adaptable to a variety of soils and pHs, including dry, hot, gravelly sites. Relatively trouble free, it can suffer from verticillium wilt.

**Right Tree for the Right Place:** Matching a tree to a site is one of the keys to success. This tree is not usually planted along the street, but as a small growing tree, it may be appropriate for areas with limited overhead growing space. It is adaptable to a variety of soils and may be used effectively on islands, gateways or in small groupings.

For more information visit <http://www.hort.uconn.edu/plants/c/cotobo/cotobo1.html>.

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**If you have a topic or addition to the Citizen Forester newsletter, please let us know.**

**If you have questions about Urban and Community Forestry, contact:**

dcr



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